



**COMMONWEALTH of VIRGINIA**  
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*Richmond 23219*

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**MEMORANDUM**

**TO: VICTORIA P. SIMMONS**  
Regulatory Coordinator  
Department of Medical Assistance Services

**FROM: KIM F. PINER**  
Special Counsel to the Department of Medical Assistance Services

**DATE: October 28, 2003**

**SUBJECT: Emergency Regulations Concerning Medallion II**

I have reviewed the attached emergency regulations concerning the Medallion II program. Based on that review, it is my view that the Director, pursuant to Executive Order 21(02) and Virginia Code § 32.1-324(C), and acting on behalf of the Board of Medical Assistance Services, has the statutory authority to promulgate the emergency regulations, and that the regulations comport with the applicable state and/or federal law.

Item 325R of the 2003 Appropriation Act provides: "1. Consistent with federal law changes contained in the 1997 Balanced Budget Act, requirements of the Centers for Medicare and Medicaid services, and state industry standards, the Department of Medical Assistance Services is seeking federal approval of changes to its MEDALLION waiver and its Medallion II waiver. 2. In order to conform the state regulations to the federally approved changes and to implement the provisions of this act, the Department shall promulgate emergency regulations to become effective within 280 days or less from the enactment of this act. The Department shall implement these necessary regulatory changes to be consistent with federal approval of the waiver changes." Without emergency regulations, the Department would be unable to meet the time frame established

**VICTORIA P. SIMMONS**  
**Department of Medical Assistance Services**  
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by the General Assembly. As such, these regulations may be adopted without public comment with the prior approval of the Governor.

Accordingly, with the prior approval of the Governor, these regulations qualify for the "emergency" exemption from Article 2 requirements. Please be advised, however, that under Virginia Code § 2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency action. In addition, the regulations shall be effective for no more than twelve months. If the Department intends to continue regulating the subject matter governed by this emergency regulation beyond 12 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations, and the proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.

If you have any questions or need any additional information, please feel free to call me at 786-3524.

c: Siran S. Faulders, Esquire